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SOCIAL AND HUMAN RIGHTS QUESTIONS

PERMANENT FORUM ON INDIGENOUS ISSUES

Information concerning indigenous issues requested by the Economic and Social Council

Report of the Secretary-General**

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** To allow time for consultation, the report has been submitted after the deadline established by the Documents Management Section.

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Summary

The Economic and Social Council, in its resolution 2000/22, entitled "Establishment of a Permanent Forum on Indigenous Issues", decided to review, without prejudging any outcome, once the Permanent Forum had been established and had held its first session, all existing mechanisms, procedures and programmes within the United Nations concerning indigenous issues, including the Working Group on Indigenous Populations, with a view to rationalizing activities, avoiding duplication and overlap and promoting effectiveness. The present report contains a summary of replies from Governments, non-governmental and indigenous organizations, and organizations of the United Nations system, as well as other relevant entities.

The comments made by States and indigenous and non-governmental organizations relate mainly to the mechanisms established to address indigenous issues in the United Nations Secretariat. These are the Working Group on Indigenous Populations, the working group on the United Nations draft declaration on the rights of indigenous peoples, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, and the Permanent Forum on indigenous issues. Some States have expressed concern about possible duplication and indigenous organizations have signalled their unanimous support for the continuation of all existing mechanisms. The annex to the report provides an outline of the mandates and outputs of the four mechanisms.

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I. INTRODUCTION

1. The Economic and Social Council, in its resolution 2000/22, entitled "Establishment of a Permanent Forum on Indigenous Issues" decided to review, once the Permanent Forum had been established and had held its first session, all existing mechanisms, procedures and programmes within the United Nations concerning indigenous issues, including the Working Group on Indigenous Populations, with a view to rationalizing activities, avoiding duplication and overlap and promoting effectiveness.

2. In its decision 2001/316, the Council requested the Secretary-General to seek, as soon as possible and no later than the substantive session of 2003 of the Council, information from Governments, non-governmental organizations, indigenous peoples' organizations, the Permanent Forum on Indigenous Issues and all existing mechanisms, procedures and programmes within the United Nations concerning indigenous issues, including the Working Group on Indigenous Populations, as a basis for holding the review mandated in paragraph 8 of resolution 2000/22.

3. On 30 September 2002, the Office of the High Commissioner for Human Rights (OHCHR), on behalf of the Secretary-General, sent a note verbale to Governments inviting them to provide information they considered relevant for the review. Replies were received from the following eight Member States: Australia, Cuba, Czech Republic, Denmark, Japan, Nepal, New Zealand and Norway.

4. OHCHR also sent a letter requesting information to non-governmental and indigenous organizations. Replies were received from the following 21 organizations: Almáciga Grupo de Trabajo Intercultural, American Indian Law Alliance (AILA), Apache Survival Coalition, Asociación des Criadores de Camelidos Andinos de las Regimes Puna del Perú (ACRICAR) MIP-CIPROCADIC, Association Tamaynut, Association européenne pour le developpement des actions culturelles, sportives et sociales, Casa Nativa Tampa Allqo, Centre d'Accompagnement des Autochtones Pygmées et Minorités Vulnerables (CAMV), Chirapaq, Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos (CAPAJ), Communauté des autochtones rwandais (CAURWA), Consejo Indio de Sud America (CISA), Indigenous Peoples' Center for Documentation, Research and Information, (DoCip), International Organization of Indigenous Resource Development, Incomindios, International Indian Treaty Council (IITC), National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS), Netherlands Centre for Indigenous Peoples, Society for Threatened Peoples, Pueblo Wayuu de la Guajira and World Adivasi Council. A reply was also received from the Indigenous Caucus.

5. Letters were also sent by OHCHR to members of the Working Group on Indigenous Populations and the Permanent Forum on Indigenous Issues. Replies were received from Mr. Yozo Yakoto (member of the Working Group) and Ms. Mililani Trask (member of the Permanent Forum). The Office also received information from the Aboriginal and Torres Strait Islander Social Justice Commissioner (Australia).

6. On 30 September 2002, OHCHR wrote to United Nations departments, organizations and specialized agencies, as well as other relevant intergovernmental organizations and bodies, enclosing a questionnaire on existing mechanisms, procedures and programmes within the United Nations concerning indigenous peoples. Twenty replies from the following organizations were received: Department of Disarmament Affairs, Department of Public Information, Office of Central Support Services and Office of Legal Affairs of the Secretariat; Joint United Nations Programme on AIDS (UNAIDS), Secretariat of the Convention on Biological Diversity, United Nations Children's Fund (UNICEF), United Nations Conference on Trade and Development (UNCTAD), United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP), United Nations Institute for Training and Research (UNITAR), United Nations Mission in Guatemala (MINUGUA) and the United Nations Non-Governmental Liaison Service (NGLS); Food and Agriculture Organization of the United Nations (FAO), International Labour Organization (ILO), Pan American Health Organization (PAHO), United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Health Organization (WHO); Organization for Economic Cooperation and Development (OECD).

II. SUMMARY OF COMMENTS BY GOVERNMENTS

7. The Government of Australia took note of the mandate of the Permanent Forum and welcomed its creation as the pre-eminent United Nations body dedicated to coordinating and promoting United Nations efforts relating to indigenous issues. The Government stated that the review had the potential to contribute to improvements in the effectiveness of the United Nations system and remove unnecessary pressures on funding and resources. The Government considered that, in the light of the establishment of the Permanent Forum, the continuing work on the United Nations draft declaration on the rights of indigenous peoples and the decision to create a new Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the mandate of the Working Group on Indigenous Populations had been fulfilled and that it was time for it to be wound up. The Government said that the Permanent Forum was charged with providing expert advice and recommendations on a range of issues, including human rights, and the Special Rapporteur was required to investigate and report on violations of human rights. Given these developments, the Government of Australia said it was confident that the work originally undertaken by the Working Group could now be discontinued. Australia also noted that the Council resolution establishing the Permanent Forum required that funding for the new body be provided from within existing resources and considered that this reinforced the need for rationalization so that the scarce resources could be allocated effectively.

8. The Government of Cuba expressed concern that in spite of various decisions taken in support of indigenous issues by the Council, the General Assembly, the Permanent Forum on Indigenous Issues and the Commission on Human Rights, insufficient progress had been made in the protection of the rights of indigenous peoples. In this context, the Government reaffirmed the importance of all mechanisms and organs concerning indigenous issues established in the framework of the United Nations. The Government acknowledged the importance of the Working Group on Indigenous Populations and noted its efforts to support the establishment of the Permanent Forum, and also referred to the studies and recommendations it had made. By virtue of its broad mandate and its different activities, such as those related to standard-setting and the analysis of issues affecting indigenous peoples, Cuba considered the Working Group to be important for a better understanding of the problems faced by these peoples. The

Government stated that the annual reports of the Working Group contained valuable information about the situation of indigenous peoples' rights and contributed to the search for appropriate solutions regarding indigenous issues. The Government stated that one mechanism did not exclude the other. The Working Group on Indigenous Populations, the Permanent Forum and the Special Rapporteur had different and specific mandates justifying their existence. The Government said that the mechanisms were complementary and did not overlap. The review, the Government believed, should have as its main objective the strengthening of coordination and the establishment of productive and efficient cooperation between the different mechanisms.

9. The Government of the Czech Republic considered that the mandates of the Working Group and the Permanent Forum overlapped to a certain extent and suggested that efforts to rationalize be made. It also noted that during the debate at the first session of the Permanent Forum calls were made for an intensification of cooperation between the two bodies and this should be taken into account. In comparing the mandate of the Special Rapporteur with that of the Working Group, the Government observed that the parts of the mandate of the Special Rapporteur relating to the gathering of information and the formulation of recommendations could lead to certain overlaps with the Working Group and these should be considered in the review process. The Government also referred to the two voluntary funds for indigenous peoples (the Voluntary Funds on Indigenous Populations and on the International Decade of the World's Indigenous People) and suggested that consideration be given to covering the two mandates with one trust fund. The Government noted that seeking cost-effectiveness was in line with the Secretary-General's reform proposals (A/57/387, paras. 170-171).

10. The Government of Denmark recommended that the review proceed in line with the methodology and approach of the 1996 review by the Secretary-General of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people (A/51/493), which could then take the form of an update of its predecessor. The Government said that it expected the information provided by the review would enable Council to conclude, at its substantive session in 2003, the review of all existing mechanisms, procedures and programmes.

11. The Government of Japan stated that it supported the reform of the United Nations system with a view to enhancing effectiveness and efficiency and recommended that the review of mechanisms be undertaken in line with the ongoing reform process. The Government said that, in view of the budgetary constraints, efforts should be made to avoid duplication and overlap as much as possible. It noted that the Permanent Forum was the highest-level organ in the United Nations to deal with indigenous issues and it was expected that the body would contribute to enhancing the lives of indigenous people in a comprehensive manner, as it had a broad mandate to cover economic and social development, culture, the environment, education and human rights. It noted also that the Permanent Forum was expected to coordinate activities relating to indigenous issues within the United Nations system. It concluded by saying that the limited resources should not be diffused but should be allocated in a focused manner.

12. The Government of Nepal provided information about activities undertaken in relation to the implementation of the resolution in question and referred to an Indigenous Development Committee set up in 1997 and the entry into force of the Indigenous Upliftment National Academy Act of 2001.

13. The Government of New Zealand stated that it supported the establishment of the Permanent Forum on Indigenous Issues and hoped that it would prove effective in mainstreaming indigenous issues within the United Nations system. The Government said that the Permanent Forum provided a model for confidence-building and consultation between States and indigenous peoples. The Government noted the role of the working group on the draft declaration and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in focusing attention on the world's most disadvantaged indigenous peoples and invited him to work closely with members of the Permanent Forum. The Government stated that the Working Group on Indigenous Populations had played an important role in bringing indigenous issues to the international arena and promoting respect for indigenous peoples worldwide over the last 20 years. However, the Government believed that the debate in the Working Group had become stale in recent years and it was not convinced that the Group's work had resulted in improvements in the conditions of the indigenous. The Government stated that it believed the Permanent Forum would be a more effective means of ensuring that indigenous concerns were translated into concrete actions. It believed that a decision on the Working Group would need to be taken soon by Governments, taking into account the views of indigenous experts and the outcome of the review. With the establishment of the Permanent Forum, the Government stated, all stakeholders needed to address the issue of duplication. The Government said that United Nations resources were spread ever thinner and it was increasingly difficult to defend budget allocations for multiple forums addressing similar or overlapping issues. The Government noted the demands of multiple meetings being made on indigenous delegations as well as the United Nations system and suggested that fewer meetings and a rationalization of agendas would boost attendance and encourage wider representation. The Government supported the inclusion of indigenous issues in the work of specialized agencies including WHO, ILO and the World Bank, and welcomed inter-agency cooperation concerning indigenous issues.

14. The Government of Norway noted that the International Decade had served to increase awareness of human rights problems faced by indigenous peoples. It called on all parties in the working group on the draft declaration to make efforts to demonstrate greater flexibility in order to bring the negotiations to a successful conclusion in 2004. It welcomed the establishment of the mandate of the Special Rapporteur, considering the appointment an important achievement that strengthened the mechanisms of the Commission on Human Rights in the field of human rights of indigenous peoples. It noted that the first report of the Special Rapporteur had emphasized the problem of a "protection gap" between existing human rights legislation, its implementation and the specific situations facing indigenous peoples. The Government said that the Working Group on Indigenous Populations had been a driving force within the United Nations as far as promotion and protection of human rights was concerned, monitoring human rights situations, formulating new standards and initiating studies. The Government stated that the establishment of the Permanent Forum constituted a landmark development in international recognition of the indigenous cause. The Forum of experts, representing indigenous peoples as well as Governments, had the capacity to address the economic, cultural,

social, educational, health and human rights concerns of indigenous peoples and assist in increased coordination and cooperation between the various United Nations institutions which deal with indigenous issues. The Government said that the Permanent Forum needed time, but above all the necessary resources, to enable it to address these expectations. The Government stressed the importance of securing adequate financial and secretariat support for the activities of the Forum from the regular budget of the United Nations.

III. SUMMARY OF COMMENTS BY INDIGENOUS AND NON-GOVERNMENTAL ORGANIZATIONS

15. Indigenous and non-governmental organizations focused their comments on the Working Group on Indigenous Populations. In addition to twenty-one written communications, the Office received a copy of the Kimberley Declaration and Plan of Implementation agreed upon by more than 300 indigenous representatives attending the World Summit on Sustainable Development in which it is stated that they support the continuation of the Working Group based on the importance of its mandate to set international standards on the rights of indigenous peoples.

16. The Indigenous Caucus, representing indigenous peoples' delegates at the twentieth session of the Working Group on Indigenous Populations, recommended that the Working Group be maintained, noting that it had a distinct mandate. The Teton Sioux Nation Treaty Council noted that the Permanent Forum and the Working Group had different mandates. The mandate of the Working Group, the organization recalled, was to review developments pertaining to the human rights of indigenous populations and to develop standards concerning the protection of indigenous rights. The mandate of the Permanent Forum, the organization noted, was to provide expert advice and recommendations on indigenous issues to the Economic and Social Council, as well as programmes, funds and agencies of the United Nations through the Council, and to prepare and disseminate information on indigenous issues. The Permanent Forum's mandate required the existence of the Working Group, because the Working Group was an information-gathering body and had a direct link to the indigenous peoples whom the United Nations was serving. The two bodies were symbiotic. The Working Group should be seen as a place where indigenous peoples from all over the world could come to give voice to their difficulties and concerns, as well as to encourage others by their successes. Citing the report of the Working Group on its twentieth session (E/CN.4/Sub.2/2002/24), the organization noted that the Working Group was a critical public forum for documenting abuses of the rights of indigenous peoples and influencing the international community in relation to human rights.

17. The American Indian Law Alliance also noted that the Permanent Forum, the Working Group and the Special Rapporteur had distinct mandates and were complementary, but recommended strengthening the capacity of the different mechanisms so that they could work effectively together. CAPAJ said that the Permanent Forum was a body that would advise on implementation of existing norms, while the Working Group was a body that could initiate new standards aimed at improving the protection of indigenous peoples' rights. The International Indian Treaty Council also considered that the three existing mechanisms were distinct and complementary, noting that the Working Group could undertake studies on developments in the field of human rights and propose new standards. The organization observed that the Permanent Forum did not have such a mandate, nor could it receive communications on human rights violations or make country visits, which fall within the mandate of the Special Rapporteur. It stated also that the mandates of the three mechanisms were interdependent and that the

termination of the Working Group would leave a critical gap in the human rights work of the United Nations and would be contrary to the interests of the United Nations. The organization recognized the limitations of the Working Group, namely that it could not address country-specific human rights violations or United Nations organs and agencies, and noted that the new mechanisms were aimed at responding to these gaps.

18. Incomindios, in a briefing paper on the Working Group prepared in consultation with indigenous peoples, noted the two-fold mandate of the Working Group (review of developments and standard-setting) and observed that the creators of the Permanent Forum deliberately did not entrust the new body with those tasks. The organization stated that the Working Group would depend on the Permanent Forum in order to promote existing and new standards, while the Permanent Forum would depend on the Working Group to further develop new standards relevant to indigenous peoples. The two bodies gave the impression of overlapping, but this was not due to any institutional duplication but because the procedures had not been developed to ensure that discussion of each mechanism focused on their respective mandates. The organization also stated that indigenous peoples' concerns remained, first and foremost, human rights issues and any attempt to withdraw them from the human rights domain should be opposed. It expressed concern that resources and attention were absorbed by United Nations agencies and less effort was made to promote and protect the human rights of indigenous peoples.

19. The Indigenous Caucus identified the draft United Nations declaration on the rights of indigenous peoples; the Voluntary Fund for Indigenous Populations; the International Year and International Decade of the World's Indigenous People; the technical seminars on self-government, sustainable development, land, human rights and natural resource corporations, health, and youth and children; the studies by Sub-Commission experts on indigenous heritage, treaties and land; the International Day of the World's Indigenous People; and the indigenous fellowship programme as some of the innovations arising from the work of the Working Group. These activities had succeeded in raising the profile of indigenous peoples internationally and promoting recognition of indigenous rights.

20. CAPAJ, among others, stated that the Working Group had become a major world forum for indigenous peoples, attracting more than 1,000 participants to contribute to the work of the five experts designated by the Sub-Commission. These participants included specialists from the best universities, politicians, artists, philosophers, indigenous lawyers and representatives of women's and workers' groups and many others, at no expense to the United Nations. According to CAPAJ, the Working Group had been productive and was recognized as such by international public opinion. The organization also noted that one of its outputs was the Permanent Forum, demonstrating that the body was capable of producing solutions.

21. The Association Tamaynut as well as other organizations provided examples of the positive role of the Working Group at the country level. The organization said that it had been reinforced through participation in the Working Group and been able to inform people in the country about processes at the United Nations. The organization attributed several changes in its region to the influence of the Working Group including the recognition of the Amazigh culture and language and the decision by the African Commission on Human and Peoples' Rights to establish its own working group on indigenous communities. The Wayuu people of Colombia, the Centre d'accompagnements des autochtones pygmées et minoritaires vulnerables and

ACRICAR expressed support for the continuation of the Working Group which, they said, provided a space for raising important issues relating to indigenous rights, poverty, development and other issues in their countries. Incomindios, among others, referred to the influence that the Working Group has had on United Nations agencies and gave the examples of the World Intellectual Property Organization and the World Health Organization as two organizations that had been encouraged to take up indigenous concerns following initiatives by the Working Group. Incomindios also stated that the draft declaration elaborated by the Working Group, although not yet adopted, has influenced legislation in several countries.

22. Non-governmental and indigenous organizations stated that the two-fold mandate of the Working Group continued to be relevant to indigenous peoples. The Indigenous Caucus stated that the Working Group was the principal forum within the United Nations for elaborating international standards on the rights of indigenous peoples. The same point was made by other non-governmental organizations, including in a joint letter to the President of the Economic and Social Council dated 22 July 2002.

23. The Indigenous Caucus noted that the Working Group did not need to continue in its established ways. It provided the Working Group with a number of proposals for its future work that would respond to the evolving situation of indigenous peoples. It referred to standard-setting on indigenous territorial rights and land ownership, the private sector, the protection of traditional knowledge, trade, indigenous economies and sustainable development, and peace and conflict resolution as possible new activities for the Working Group. It also proposed that the Working Group should make a plan for the next decade with a focus on standard-setting, and suggested developing research partnerships between indigenous peoples and Working Group members as well as indicating a number of areas that could be the subject of study. Incomindios also pointed to standard-setting that could be undertaken by the Working Group, including the drafting of guidelines on indigenous knowledge, the private sector and the notion of prior informed consent.

24. Some other organizations made reference to the future work of the Working Group. The World Adivasi Council, for example, recommended that the Working Group should examine the causes of the deteriorating situation of indigenous peoples and recommended assessments of development aid for indigenous peoples. AILA pointed out that the Working Group had a role in reviewing the International Decade and implementing the recommendation contained in General Assembly resolution 57/157 to further develop international standards for the promotion and protection of the rights of indigenous peoples.

25. Several organizations made reference to the financial aspects of the existing United Nations mechanisms. The Indigenous Caucus stated that it considered that the United Nations, in fulfilling the goals of the International Decade, should increase rather than decrease human and financial resources available for the promotion and protection of the rights of indigenous peoples. It noted that the Working Group with its meagre resources had achieved much in the previous 20 years. A similar point was also made by AILA, which stated that the cost of the Working Group was minimal to the United Nations and its importance to indigenous peoples was immense. It pointed, in its submission, to the accomplishments of the body that had been achieved despite meagre resources. The International Organization of Indigenous Resource

Development stated that money should not be the reason to exclude the indigenous voice under the guise of duplication and overlap. The organization said that successful programmes should not be terminated but built upon to make them even better. Incomindios noted that the Working Group was the least costly of the working groups of the Sub-Commission.

26. A number of indigenous and non-governmental organizations pointed to the benefits provided by the Working Group over and above its function as a United Nations expert body on human rights and indigenous peoples. The Indigenous Caucus noted in its submission that the Working Group was a centre for authoritative international discourse on the rights of indigenous peoples, informing many scholars and activists alike. It observed that the body had provided opportunities for indigenous peoples and participants to meet and deepen concrete partnerships and projects. Incomindios made reference to the open rules of participation of the Working Group that it said were guaranteed through the long custom of 20 years of experience.

27. Chirapaq, like several other indigenous organizations, stated that the Working Group gave indigenous leaders an opportunity to reflect on and analyse indigenous concerns. The experience, the organization said, had helped it to develop its own national capacity in human rights. The organization called the Working Group a "place of learning for indigenous peoples" since indigenous leaders learned in situ and through meetings with other delegates the global dimension of their aspirations and concerns. The organization noted that the Working Group served as the entry point to the United Nations and that the large numbers of participants, including indigenous representatives, academics, non-governmental organizations, students and solidarity groups, had led to the creation of regional and international networks, uniting efforts to advance proposals. The organization concluded by suggesting that the Working Group had helped to put pressure on Governments to incorporate progressively initiatives that took into account the rights of indigenous peoples.

28. IITC stated that the Working Group since its inception had addressed its mandate in true partnership with indigenous peoples, allowed the participation of thousands of representatives of organizations and peoples without consultative status with the Economic and Social Council, and served as a model of indigenous participation for other United Nations forums. The organization noted that the body had served as a training ground for indigenous participation in these other forums and as an introduction to international work. AILA stated that the Working Group had been established at the request of indigenous peoples and should not be eliminated without consulting them. A further point was made by Incomindios, which remarked that the Working Group represented the historical memory of the United Nations and thereby constituted a source of contacts, relations and networks that had been developed over 20 years and could be available to the new bodies.

29. A number of indigenous and non-governmental organizations also provided comments on the Permanent Forum, the Special Rapporteur, the working group on the draft declaration and the International Decade. The establishment of the Permanent Forum was welcomed and some suggestions were made on how it might develop its work in the future. The Casa Nativa Tampa Allqo stated that the Permanent Forum had the opportunity to become a mechanism for guaranteeing cooperation among United Nations organizations on indigenous issues. AILA said that it saw a need for strengthening the financial and other resources available to the Forum and looked forward to the realization of the proposals contained in the body's first report. IITC remarked that the Forum had requested a certain number of studies and the elaboration of

standards in its first report and pointed to the Working Group as a partner in carrying out these tasks. NAILSS stated that the Forum, with its wide mandate, could help to design measures that improved the economic and social situations of indigenous peoples, and proposed that it consider how it could explore profit-generating ventures for indigenous peoples. CISA pointed to some of the limitations of the Forum, suggesting that it could not intervene to resolve problems between States and indigenous peoples. Incomindios and some other organizations noted that the Forum had just commenced its work and needed to establish itself and noted also that its work would be evaluated at the end of five years. The organization also drew attention to the report of the open-ended ad hoc working group on a permanent forum for indigenous people (E/CN.4/2000/86) and observed that the mandate elaborated in a joint paper by government and indigenous representatives had been amended to exclude certain tasks, thereby limiting the scope of the body.

30. AILA and IITC made comments on the role of the Special Rapporteur. AILA said that the Permanent Forum, the Working Group and the Special Rapporteur needed to work in a complementary way and supported the recommendation of the Permanent Forum to organize a technical seminar with members of the Forum, the Working Group and the special rapporteurs of the United Nations system. IITC recalled that the Special Rapporteur had been asked to take into account recommendations of the Working Group and the Permanent Forum. The organization also stated that the Permanent Forum and the Special Rapporteur had been established only in the past two years and therefore were only now beginning to develop their methods of work, and called for more time for the three mechanisms to develop complementary working relations. Some organizations, including the Indigenous Caucus, IITC and AILA, made comments on the draft declaration, calling for States to uphold the right of self-determination and work towards an early adoption. Both organizations called for a review of the International Decade and recommended that consideration be given to proclaiming a second Decade.

31. A number of organizations considered that it was premature to hold the review on indigenous mechanisms and proposed waiting until the Permanent Forum had been strengthened by way of technical and financial resources and its secretariat was fully functioning.

IV. SUMMARY OF COMMENTS BY NATIONAL HUMAN RIGHTS INSTITUTIONS AND INDEPENDENT EXPERTS

32. Information relating to the present report was received from the Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights and Equal Opportunity Commission and Ms. Mililani Trask and Mr. Yozo Yokota, independent experts of the Permanent Forum on Indigenous Issues and Sub-Commission on the Promotion and Protection of Human Rights, respectively.

33. The Aboriginal and Torres Strait Islander Social Justice Commissioner noted that the Working Group had opened up international processes for the participation of indigenous peoples, influenced and continued to influence the agendas of various agencies of the United Nations system on their approaches to indigenous peoples, and fulfilled a valuable role in standard-setting. He considered that it was premature to discontinue the Working Group given the lack of agreed standards that it might oversee in future. The Permanent Forum had the capacity to mobilize the entire United Nations system to address indigenous issues worldwide and also offer indigenous peoples scope for participation in programming and policy directions.

The Forum had the potential to mainstream indigenous rights within the United Nations, but required adequate financial and human resources. The Commissioner made reference to the slow progress in the adoption of articles of the draft declaration on the rights of indigenous peoples and hailed the creation of the Special Rapporteur as one of the important achievements of the International Decade of the World's Indigenous People. The role of the Permanent Forum might include application of existing standards but it was not mandated to elaborate new standards or review human rights issues at the national level: these were the functions of the Working Group and Special Rapporteur. The Working Group reviewed developments without investigating complaints, a task that was entrusted to the Special Rapporteur. The Special Rapporteur had potential benefits over the human rights treaty committees, because the latter could only deal with complaints if the country alleged to have violated human rights was a party to the relevant treaty and recognized the competence of the committee. Noting that United Nations human rights mechanisms on indigenous issues had not been provided with sufficient human, technical and financial resources to ensure that they could properly fulfil their mandates and be fully operational, the Commissioner recommended that adequate resources be provided from the United Nations regular budget to the Permanent Forum.

34. Mililani Trask, expert of the Permanent Forum stated that she believed that the Working Group on Indigenous Populations, the Special Rapporteur and the Permanent Forum were mandated and authorized to perform distinct functions which were not duplicative nor overlapping and recommended that the United Nations should provide funds for these mechanisms so that they could meet to discuss how to interface and better promote their effectiveness in the United Nations. The Working Group should be maintained because it had a crucial and unique mandate and an inclusive and democratic structure that admitted indigenous peoples, nations and organizations. She recommended that the Working Groups experts be indigenous experts and that indigenous peoples be involved in the nomination process. She proposed that the Working Group experts have term limits; she also recommended that the Working Group prepare a biannual report on State action that impacted on the rights of indigenous peoples' human rights. Ms. Trask considered that the Special Rapporteur did not duplicate the work of the Permanent Forum or the Working Group. She noted that the Special Rapporteur was mandated to investigate human rights violations of indigenous peoples by States and to formulate preventive solutions, which neither the Permanent Forum nor Working Group was empowered to do. She further observed that the Permanent Forum could bring cohesion to indigenous issues in the United Nations system and provide advice at the highest level. For example, the Forum could play a role in integrating indigenous concerns into the Millennium Development Goals.

35. Mr. Yokota, member of the Working Group on Indigenous Populations, stated that the Working Group should continue to exist so that it could continue to study specific topics and set standards. The Working Group was a space where indigenous peoples could express their views on various issues freely and directly. He proposed that the members of the Working Group and the Forum should meet to discuss and clarify their mandates.

V. RECOMMENDATIONS BY EXPERT OR LEGISLATIVE BODIES OF THE UNITED NATIONS

36. The Working Group on Indigenous Populations at its twentieth session concluded that there existed a danger that its mandate could be cancelled as a result of the review requested by the Economic and Social Council and noted that few indigenous organizations would be able to take part in the discussions that were due to take place in the Council. The Working Group agreed that the establishment of two new bodies together with the review by the Council should serve as a catalyst for a thorough reflection on the Working Group that should lead to an action-oriented programme of work and a consideration of new and improved methods of work. As a consequence, the Working Group decided to elaborate a series of working papers on its future work and on its relationship with the newly established mechanisms concerning indigenous peoples (E/CN.4/2002/24, paras. 82-85).

37. The Sub-Commission on the Protection and Promotion of Human Rights, in its resolution 2002/17, expressed its full support for the continuation of the Working Group, requested the Chairperson-Rapporteur to contact the Economic and Social Council to request that he be involved in the consultations, and requested also that the Commission on Human Rights express its support for the continuing need for the Working Group. The Commission on Human Rights, in its resolution 2003/55, considering the continuing need for the Working Group on account of its mandate, which is distinct from those of the Permanent Forum and the Special Rapporteur, endorsed the recommendation of the Sub-Commission and recommended that the Council take duly into account the contents of the resolution when holding the review of all existing mechanisms.

VI. INFORMATION RECEIVED FROM DEPARTMENTS, PROGRAMMES, ORGANIZATIONS AND AGENCIES OF THE UNITED NATIONS SYSTEM AND OTHER INTERGOVERNMENTAL ORGANIZATIONS

38. The information provided by the United Nations system in response to the questionnaire sent by OHCHR was too extensive to be reproduced in full. Some key elements, relating to mandates and policies, are summarized in this report. The full responses from those organizations that filled out the questionnaire, providing details on their activities, are available in the original language. It should also be noted that 16 United Nations system organizations submitted information and analyses regarding their work relating to indigenous issues at the second session of the Permanent Forum in May 2003. The Forum took note of the reports as well as oral presentations and formulated recommendations to the Council (see E/2003/43-E/C.19/2003/22).

39. Since the 1996 review by the Secretary-General (A/51/493), there have been several positive developments. The establishment, in January 2002, of the Inter-Agency Support Group on Indigenous Issues, meeting twice a year, was recognized as a positive initiative in several governmental and non-governmental submissions, as well as by the United Nations system itself. There are indications that United Nations organizations and agencies are increasingly cooperating in joint activities and that indigenous peoples are involved more closely in the planning, implementation and evaluation of projects.

40. The International Labour Organization is responsible for the only international instruments that deal specifically with the rights of indigenous and tribal peoples: the Indigenous and Tribal Populations Convention, 1957 (No. 107) and the Indigenous and Tribal Peoples Convention, 1989 (No.169). The resolution on ILO action concerning indigenous and tribal peoples, adopted by the International Labour Conference in 1989 along with the Convention, emphasizes the organization's determination to improve the situation and status of the indigenous peoples. ILO stated that indigenous and tribal peoples can and do participate as representatives of NGOs on the ILO Special List of Non-Governmental International Organizations. In some cases, indigenous organizations form partnerships with workers' organizations that do have standing in ILO and have them file complaints. All technical activities concerning indigenous and tribal peoples within the ILO indigenous and tribal programmes are formulated and implemented with the participation of the peoples concerned.

41. OHCHR supports the United Nations treaty monitoring bodies and special mechanisms established by the Commission on Human Rights, all of which provide protection of the rights of indigenous people. OHCHR has been the main point of entry for indigenous organizations seeking recognition of their specific rights as indigenous peoples and for drawing attention to human rights violations by States. OHCHR has extensive and regular contacts with indigenous organizations and organizes two regular mandated meeting for indigenous people each year: the Working Group on Indigenous Populations attended by over 1,000 persons and the working group on the draft declaration which is attended by some 200 indigenous representatives.

42. The United Nations Development Programme (UNDP) issued a policy guidance note in 2001 entitled: "UNDP and Indigenous Peoples: A Policy of Engagement" that recognizes indigenous peoples' rights and their vital role and contribution to development. The objective of the policy is to provide UNDP staff with a framework to guide their work in building sustainable partnerships with indigenous peoples. UNDP organized many informal and formal meetings with indigenous peoples. The Executive Director of an indigenous organization is a member of the UNDP-CSO (Civil Society Organizations) Advisory Committee that advises the Administrator on key policy initiatives.

43. The World Food Programme (WFP) undertook a comprehensive review of its experience with indigenous peoples in 2001in order to develop a better understanding of their needs, document best practices and draw operational lessons. There were many lessons learnt, including the importance of geographic targeting, participatory approaches and partnerships in programmes. WFP gave examples of several projects in which indigenous peoples grass-roots organizations are involved in planning and management, noting that there was less success if such projects are not built around indigenous peoples own forms of community organization.

44. The work of UNICEF is guided by the Convention on the Rights of the Child, which devotes a specific provision to the situation of indigenous peoples in its article 30. The article provides for the right of children who are indigenous to enjoy their culture, practice their religion and use their language. Indigenous issues are thus a full part of the UNICEF mandate and many of its programmes aim to deal with disparities between indigenous peoples and the rest of the population. UNICEF works with indigenous organizations at the national level to build partnerships with indigenous partners to elaborate and implement programmes and policies.

45. The WHO mandate relating to indigenous people is based on the adoption of its resolution entitled "Health of indigenous peoples" in 1993 urging Governments to strengthen the capacity of national institutions responsible for the health of indigenous peoples.

46. The United Nations Mission in Guatemala is mandated to verify the implementation of the peace accords, offer its good offices and recommendations, provide technical assistance, and inform the public on issues relating to its mandate. All four mandates relate to indigenous people, who constitute at least 50 per cent of the Guatemalan population. In addition, there is a specific indigenous accord - the Agreement on Identity and Rights of Indigenous People - that includes a reference to ILO Convention No. 169. The most important channel of communication is the indigenous councils at the department level, as well as the preparatory committee for the establishment of a national indigenous council.

47. The International Guidelines on HIV/AIDS and Human Rights published jointly by UNAIDS and OHCHR address issues of indigenous peoples in the context of HIV/AIDS. Guideline 8 recommends that States should support the implementation of specially designed and targeted HIV prevention and care programmes for those who have less access to mainstream programmes due to language, poverty, social or legal or physical marginalization, e.g. minorities, migrants, indigenous peoples, refugees, etc. UNAIDS has held two ad hoc consultations with indigenous representatives in the framework of the OHCHR Indigenous Fellowship Programme.

48. The United Nations Conference on Trade and Development (UNCTAD) includes indigenous representatives in meetings relevant to them, for example, the Expert Meeting on Systems and National Experiences for the Protection of Traditional Knowledge, Innovations and Practices, when five indigenous experts were funded by the Rockefeller Foundation. UNCTAD also identifies the protection of traditional knowledge, innovations and practices as a part of its mandate that is relevant to indigenous issues.

49. The United Nations Environment Programme (UNEP) indicates that greater attention is being given to indigenous peoples' right. The Secretariat for the Convention on Biological Diversity stated that the Convention contains a number of provisions relevant to indigenous peoples, including article 8 (j), which is considered a core provision. UNEP systematically incorporated indigenous peoples' views in resource management environmental policies and programmes. It facilitates indigenous groups in environmental negotiations.

50. The United Nations Educational, Scientific and Cultural Organization (UNESCO) National Commissions maintain close relations with indigenous organizations that are active in the field.

51. The United Nations Institute for Training and Research (UNITAR) organized a seminar for members of the Permanent Forum on Indigenous Issues to help them to prepare for their first session. UNITAR is in contact with more than 30 indigenous organizations in preparation for its training programmes.

52. The Food and Agriculture Organization (FAO) of the United Nations holds both mandated and ad hoc consultations with indigenous peoples. The mandated meetings include the formal Multi-stakeholder Dialogues on Sustainable Agriculture and Rural Development through the Commission on Sustainable Development and the World Summit on Sustainable

Development process where indigenous peoples are present as one of Agenda 21's designated "major groups". International networks of indigenous peoples are invited to attend as observers all relevant sessions of the Commission on Genetic Resources for Food and Agriculture. Indigenous peoples contributed to the preparations for the World Food Summit.

53. As part of its mandate, the Department of Public Information of the Secretariat publicizes issues related to indigenous peoples in its efforts to highlight the work of the UN in human rights and social development.

54. The United Nations system as a whole can greatly benefit from further cooperation and coordination of its work on indigenous peoples. As was stated in the 1996 review, the absence of internationally accepted standards relating to indigenous peoples and applicable in all countries inhibits the elaboration of an operational policy that could be used to guide the United Nations system as a whole. The commitment made by the General Assembly in its resolution 50/157 to the principle of full and effective involvement of indigenous peoples in the planning and implementation of projects affecting them has yet to be incorporated into the operational activities of all agencies.

55. What is also apparent from the information provided by the United Nations system is that there are no system wide policy objectives in relation to indigenous peoples that unite or make coherent all organizations and programmes. The Permanent Forum is mandated to advise the United Nations system, through the Council, on how it can improve its coordination and this may in the longer term mean that the new body, in consultation with all interested parties, will help in defining policy objectives that can be applied across the United Nations system. The governing bodies of organizations of the United Nations system and major donors should become partners in this initiative, so that efforts to rationalize the work of the United Nations on indigenous issues are fruitful.

56. The commitments set forth in the Millennium Declaration as well as the reform agenda of the Secretary-General help the organization to address the urgent needs of the most vulnerable groups, get measurable results, and make the best use of available resources. There is no doubt that indigenous peoples, many of whom are among the poorest in the world, constitute a group that merits the fullest attention of the international community. This requires that each United Nations organization and agency looks at how it can strengthen its capacity and programmes within its area of expertise and competence. It also requires that the United Nations system as a whole must examine how it can draw together its expertise, capacity and resources and contribute to improvements in the lives of indigenous peoples.

57. The Organization for Economic Cooperation and Development (OECD) stated that through its development cluster and, particularly, its Development Assistance Committee (DAC) and Development Centre, it deals with development issues that have an impact on the livelihoods of indigenous peoples. Some DAC member countries have developed specific cooperation policies addressing indigenous issues. Some OECD/DAC guidelines stress the need to develop approaches reflecting the cultural and spiritual identity of diverse indigenous peoples and to define strategies through multi-stakeholder approaches, also involving indigenous peoples. The guidelines call for donors to support indigenous and customary peace-building capacities, efforts to find solutions for special claims of indigenous peoples, and the development of the political space within which indigenous peoples and groups can work out their own solutions to problems.

VII. OBSERVATIONS

58. As requested in the Economic and Social Council decision 2001/316, the Secretary-General has sought and received information on indigenous issues and existing mechanisms, procedures and programmes within the United Nations. The information was requested to serve as a basis for the review by the Council mandated in paragraph 8 of resolution 2002/22. While many indigenous and non-governmental organizations provided comments, only eight States provided inputs in response to the request sent by OHCHR on behalf of the Secretary-General.

59. The review to be conducted by the Council at its substantive session of 2003, should contribute to determining how best to promote and support the legitimate interests and concerns of indigenous peoples. The key objectives must be to ensure that the mechanisms, procedures and programmes are not duplicative and promote effectiveness and that activities are rationalized. It is also important that the work of the United Nations in this important area be in line with the broader United Nations reform objectives endorsed by the General Assembly (in resolution 57/300). The ultimate goal must be to ensure that indigenous peoples are provided with an effective voice within the United Nations system and that their rights and aspirations are respected and protected.

Annex

UNITED NATIONS MECHANISMS CONCERNING INDIGENOUS ISSUES

Mechanism	Mandate	Composition	Main inter-active partner	Outputs
Working Group on Indigenous Populations	Review developments and elaborate standards regarding indigenous rights (Council resolution 1982/34)	Five independent human rights experts; indigenous organizations, States, United Nations and NGOs are observers; open to all indigenous representatives	Organizations of indigenous peoples. States provide information under the item "Review of developments"	Annual report on recent developments on indigenous peoples, and recommendations for parent bodies, leading to studies and standard-setting
Working group on the draft United Nations declaration on the rights of indigenous peoples	Elaboration of a draft declaration on indigenous rights (Council resolution 1995/32)	All States United Nations and NGOs are observers; indigenous organizations in consultative status or approved in accordance with Commission on Human Rights resolution 1995/32 procedure can also participate as observers	States and indigenous organizations	Annual report on progress, with aim to reach consensus on a draft that can be submitted to the Commission and General Assembly
Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people	Gather, request, receive and exchange information and communications on human rights, formulate recommendations on measures to remedy violations, make country visits, and take up complaints (Commission on Human Rights resolution 2001/57)	Special Rapporteur is an independent expert appointed by the Commission on Human Rights	States Indigenous organizations can provide information and communications on violations	Annual report on human rights theme, fact-finding in countries, urgent action on cases, recommendations to Commission and to Governments
Permanent Forum on Indigenous Issues	Serve as an advisory body to the Economic and Social Council with the mandate to discuss indigenous issues by providing expert advice and recommendations to the Council, as well as to the United Nations system, and by preparing and disseminating information on indigenous issues. (Council resolution 2000/22)	8 Government-nominated and 8 indigenous-nominated independent experts. United Nations, NGOS and States are observers; open to all indigenous peoples	United Nations system and other intergovernmental organizations, indigenous organizations and States	Annual report to the Economic and Social Council, with recommendations addressed to the United Nations system, through the Council

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